



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OCT 01 2007

REPLY TO THE ATTENTION OF: WN-16J

Beth L. Tallon, Section Chief
Industrial NPDES Permits Section
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204-2251

Re: US Steel Corporation, Gary Works
Gary, Indiana
Draft Permit
Permit No. IN0000281

Dear Ms. Tallon:

The U. S. Environmental Protection Agency received a copy of the above-referenced draft permit on July 20, 2007. Under 40 CFR 123.44(a)(1) and (b)(1), and the Memorandum of Agreement between EPA and the State of Indiana, EPA has 90 days from receipt to object to draft permits. In accordance with 40 CFR 123.44(c), and for the reasons set forth below, EPA is objecting to the draft permit. As provided by 40 CFR 123.44(b)(2)(ii), we are indicating the actions that must be taken by the State to eliminate the objection, including conditions which the permit would include if it were issued by EPA. We are still reviewing the draft permit and may provide additional grounds for objection within the 90-day period.

Water Quality Based Effluent Limitations

40 CFR 122.44(d) and 40 CFR 123.25(a)(14) require that National Pollutant Discharge Elimination System (NPDES) permits contain appropriate water quality based effluent limitations (WQBELs) for all pollutants which are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any applicable water quality standards. Attachment IV to the fact sheet for the draft permit sets forth the pollutants which the Indiana Department of Environmental Management (IDEM) has determined have such reasonable potential. The draft permit does not contain appropriate WQBELs for discharges of each of the following pollutants which are referenced in Attachment IV to the fact sheet: CBOD₅ in discharges from outfall 034 (Attachment IV indicates that a summertime monthly concentration WQBEL of 5.62 mg/l and a wintertime monthly concentration WQBEL of 19.12 mg/l are necessary for that outfall); whole effluent toxicity in discharges from outfall 028/030 (Attachment IV indicates that a chronic toxicity limitation of 2.8 TU_c is necessary for that outfall); and whole effluent toxicity in discharges from outfall 034 (Attachment IV indicates

that a chronic toxicity limitation of 3.1 TU_c is necessary for discharges from that outfall, but the draft permit contains a chronic toxicity limitation of 3.3 TU_c).

To eliminate these objections, the final permit must contain WQBELs for these parameters that are consistent with IDEM's reasonable potential determinations as set forth in Attachment IV to the fact sheet. Such WQBELs would be included in the permit if it were issued by EPA.

Technology Based Effluent Limitations

40 CFR 122.44(a) and 40 CFR 123.25(a) (15) require imposition of appropriate technology based effluent limitations in NPDES permits. Attachment III to the fact sheet sets forth the technology based effluent limitations that IDEM determined would be appropriate. We noted discrepancies between Attachment III and the draft permit for limitations applicable to internal outfall 604 for the following pollutants: the monthly average load limitations for copper, lead and zinc; and the daily maximum load limitations for lead and zinc.

To eliminate these objections, the final permit must contain technology based effluent limitations that are consistent with Attachment III to the fact sheet. Such limitations would be included in the permit if it were issued by EPA.

Compliance Schedules

The draft permit contains five-year compliance schedules for achievement of WQBELs for the following parameters at the following outfalls: benzo(a)pyrene (Outfalls 005 and 010); free cyanide (Outfall 005); chronic whole effluent toxicity (Outfalls 005 and 034); copper (Outfalls 018 and 040); zinc (Outfall 040); ammonia (Outfall 040); and mercury (several outfalls).

40 CFR 122.47(a) and 40 CFR 123.25(a)(18) allow schedules of compliance in NPDES permits, but only "when appropriate," and only when the schedule of compliance requires achievement of compliance "as soon as possible" and meets other specified conditions. The draft permit does not meet these requirements because there has been no showing that such schedules are appropriate, and no showing that the five-year periods of time for achieving compliance are "as soon as possible." Indeed, there is no indication from the fact sheet that the permittee is currently unable to meet any of the limitations for which a compliance schedule is proposed; no indication as to what measures the permittee would have to construct or implement to enable it to meet those limitations (assuming that they cannot currently be met); and no indication as to the amount of time it would take for the permittee to construct or implement any measures necessary for achieving compliance.

With regard to the proposed compliance schedule for free cyanide, the fact sheet suggests that this compliance schedule is needed while IDEM evaluates a request for a site-specific criteria modification that could allow for less stringent effluent limitations in a future permit. However, compliance schedules are not appropriate where the basis is to provide the state with additional time to undertake actions such as considering revisions to water quality standards that could impact establishment of future effluent limitations. Instead, compliance schedules are permissible under certain circumstances to allow a discharger to make the necessary facility or

operational changes in order to comply with the effluent limitation that has been included in the permit based upon the water quality standards in effect at the time the permit is issued. We note that EPA has recently issued guidance on the use of compliance schedules in NPDES permits. We are enclosing this guidance memorandum, and urge IDEM to use this memorandum as it revises the draft permit.


To eliminate these objections, the final permit must either remove the compliance schedule provisions or ensure that they meet the requirements of 40 CFR 122.47(a) and 40 CFR 123.25(a)(18). EPA would either not include such compliance schedules, or revise those schedules to ensure that they meet the requirements of 40 CFR 122.47(a), if EPA were the permitting authority.

Antidegradation

The draft permit contains effluent limitations that would allow discharges of zinc through internal outfall 603 to increase beyond the levels set forth in the previous permit for this facility. It is not clear if these limitations meet the antidegradation requirements of the State's water quality standards as required by 40 CFR 122.44(d) and 123.25(a)(14). IDEM needs to provide information in the fact sheet or elsewhere in the administrative record demonstrating that these requirements have been met before IDEM issues the final permit. EPA would take such actions if it were the permitting authority.

Please be advised that under 40 CFR 122.4(c), the State may not issue this permit over an EPA objection. We look forward to working with IDEM as it revises the permit to ensure that it complies with the Clean Water Act and EPA's implementing regulations. In accordance with 40 CFR 123.44(e), the State or any interested person may request that a public hearing be held by the Regional Administrator on these objections. Following such a hearing (if one is held), the Regional Administrator may reaffirm the original objection, modify the terms of the objection, or withdraw the objection. 40 CFR 123.44(g). The Regional Administrator may issue the permit if IDEM does not timely resubmit a permit revised to meet EPA's objections. 40 CFR 123.45(h). Please contact Peter Swenson at (312) 886-0236, if you have any questions.

Sincerely yours,


for Kevin M. Pierard
Acting Director, Water Division

Enclosure

cc: Stan Rigney, IDEM
Kenneth Mentzel, US Steel Corporation, Gary Works